## EMPLOYEES PROVIDENT FUND BOARD v. R.R. CHELLIAH BROS.

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) and MacIntyre F.J.) January 24, 1969]

[K.L.—Federal Court Civil Appeal No. X.42 of 1968]

*Provident Fund — Employee — When person ceases to be employee — Employee appointed to post on salary exceeding $500 after period of unemployment — Whether liable to contribute — Employees Provident Fund Ordinance, 1951, s. 2 and First Schedule — Definition of "employee".*

In this case, the facts were that one Kirpal Singh Brar had been an employee of the Malayan Government on contract as an inspector of police during which time he was a member of the Employees Provident Fund, his salary at that time being less than $500. He resigned from government service in 1960 and went to London to read law. He qualified in 1964 and on his return after he was admitted to practise as an advocate and solicitor he was employed as an assistant by the respondents from September 1, 1964 at a salary of $501 per month which was increased to $601 per month in September 1965. Under paragraph (2) of the First Schedule to the Employees Provident Fund Ordinance, 1951, a person whose wages exceed $500 a month is exempted from the definition of "employee" but the proviso to the paragraph provides that "where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be $500 a month . . . ". The Employees Provident Fund Board in this case applied for a declaration that Kirpal Singh Brar was an employee of the respondents within the meaning of the Ordinance, and for an order that the respondents do pay arrears of contribution. The learned trial judge held that Kirpal Singh Brar ceased to be an employee for the purposes of the Employees Provident Fund Ordinance, when he left the government service in 1960 and that he did not become an employee when he was subsequently employed in 1964 at a salary exceeding $500. The board appealed.

**Held** (Azmi L.P. and MacIntyre F.J., Ong Hock Thye C.J. dissenting): once an employee commenced to contribute and so becomes a member of the Employees Provident Fund, his subsequent employment does not affect his status as a member, though his liability to contribute would only arise when he is an employee and earning wages. The proviso to paragraph (2) of the First Schedule would apply irrespective of whether the increase of his wages above $500 a month occurred during his employment with the same or with another subsequent employer.

*Cases referred to:—*

(1) *Reddy* v. *Employees Provident Fund Board* [1967] 2 M.L.J. 82.

(2) *Bottomley's* case (1880), 16 Ch. D. 681 at p. 686.

(3) *Hawkins* v. *Gathercole* 6 D.M.&G. 1.

(4) *Viscountess Rhondda's Claim* [1922] 2 A.C. 339.

(5) *Merchandise Transport Ltd.* v. *British Transport Commission* [1962] 2 Q.B. 173, 186.

(6) *Berry* v. *British Transport Commission* [1961] 3 W.L.R. 450, 462.

In the court below *Robert K.C. Ho* appeared for the applicants, and *R.R. Chelliah* for the respondents. On May 23, 1968 the following judgment was delivered by —

**Raja Azlan Shah J.:** This is an application by the Employees Provident Fund Board for (a) a declaration that Kirpal Singh Brar was an employee of the respondents within the meaning of the Employees Provident Fund Ordinance 1951 as amended, and (b) for an order that the defendants do pay arrears of contribution amounting to $800 and interest.

Insofar as the facts of the case are concerned they are not in dispute. From 16th June 1957 to August 1960 Kirpal Singh Brar was an employee of the Malayan Government on contract as an Inspector of Police, during which time he was a member of the fund. He resigned from Government service in August 1960, and in April 1961 he left for London to read law. He qualified in February 1964 and returned to read as a pupil in the respondents' chambers. He was admitted to practise as an advocate and solicitor of the High Court on 10th September 1964, after which he was employed as an assistant by the respondents from 1st September 1964 at a salary of $501 per month which was increased to $601 per month in September 1965. He resigned from the respondents' employ on 31st January 1966 to start a practice of his own.

The preliminary point here is to consider whether Kirpal Singh Brar was an employee of the respondents within the meaning of the Ordinance, *i.e.* any person:—

> "Who has attained the age of 16 years and is employed under a contract of service or apprenticeship, whether written or oral and whether express or implied to work for an employer."

and one who is not:—

> "Specified in the First Schedule to this Ordinance."

Paragraph (2) of the First Schedule, with which we are concerned, states:—

> "Any person whose wages exceed five hundred dollars a month."

would not be an employee within the meaning of the Ordinance and therefore would not be liable to contribute to the fund. However, the proviso to the said paragraph has given rise to some doubts as to its interpretation and is now the subject of the present point in controversy. It states:—

> "Provided that where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee at any time exceed $500 a month such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be $500 a month."

The point for determination is whether Kirpal Singh Brar is caught by this proviso. When he was in the police force he was a member of the fund as his salary was less than $500 per month. There was a clear break in August 1960 when he resigned from the police force and ceased to contribute to the fund. Section 13 sets out the circumstances in which withdrawals can be made from the fund. Sub-section (2) of the same section goes further to state:—

"When a member of the fund withdraws any money standing to his credit in the fund, he shall not thereafter be treated as an employee, notwithstanding that but for the provisions of this subsection he would be an employee, for the purposes of this Ordinance".

It is clear from this sub-section that once a person has ceased to be an employee within the meaning of this Ordinance he shall not thereafter be treated as an "employee". It may be argued that this sub-section applies only to cases of withdrawals. That may be so. On the other hand, as the rest of the Ordinance is silent on this point I must take this sub-section and reconsider it in the light of the whole Ordinance. It might therefore be referred to in the present case, to conclude that once a person has ceased to be such an employee he would not be treated as an employee for the purposes of this Ordinance. There is nothing to prevent him from putting himself in circumstances where he would again be termed as "employee" within the meaning of the Ordinance.

Counsel for the applicants submitted that the proviso to paragraph (2) of the First Schedule re-imposes the liability on Kirpal Singh Brar to contribute to the fund for the period from October 1964 to January 1966 as it is the ordinary and natural meaning of the proviso. It is not disputed that it would certainly apply in cases of continuous employment where the employee's wages are increased to exceed $500 a month. Certainly it will also apply to cases where there are breaks in employment and the employee is re-employed at a wage of $500 or below. But to go further and say that it must also apply to the present case where there was a clear break when the person ceased to be an employee within the meaning of the Ordinance and was re-employed at a salary of over $500 (circumstances under which a person would not be an "employee" within the meaning of the Ordinance) is stretching the interpretation of the proviso to an extravagant length. So far as this court is concerned, its function is to ascertain the true meaning and effect of the words as expressed in the statute.

There is certainly an ambiguity as to the interpretation of the meaning behind the proviso, and where there is such an ambiguity it is not sufficient merely to hack the sentences down to a few words and hang on those words as being the natural meaning of the section. One must look at the Ordinance as a whole to ascertain its true and natural meaning and the intention or purpose of the Ordinance. As I have stated in *Reddy*'s case,[1] the purpose or intention of this Ordinance is to ensure financial security to an employee in his old age. I would go further to say that it was certainly intended for those in the lower income group as a compulsory saving either for their old age or for future disability should it arise, especially where there appears to be no other alternative or compulsory saving made by the employer or employee. Counsel's contention that:—

"Once a contributor always a contributor . . . . however unjust, arbitrary or inconvenient the meaning conveyed may be".

would certainly lead to a great deal of absurdity. The inconvenience created would most certainly be undesirable. As was crisply put in a familiar passage from the judgment of Jessel M.R. in *Bottomley's* case:—[2]

"The argument of inconvenience is a very strong argument where the construction of a document is ambiguous — where it is fairly open to two constructions. Then the argument of inconvenience, like the argument of absurdity, may be used with great force."

I will dismiss the application with costs.

*The applicants appealed against the dismissal of their application to the Federal Court.*

FEDERAL COURT.

*V.C. George* for the appellants.

*R.R. Chelliah* for the respondents.

*Cur. Adv. Vult.*

**Azmi L.P.:** This is an appeal against the judgment of the High Court at Kuala Lumpur. The facts are not disputed and may be briefly stated as follows.

One Kirpal Singh Brar was employed by the Malayan Government as a police officer from June 1957 to August 1960. During this period as an employee of the Government he contributed to the Employees Provident Fund under the provisions of the Employees Provident Fund Ordinance 1951 and so became a member of the fund.

In August 1960 he resigned from his service as inspector of police. In the following year he proceeded to London to read law. He was subsequently called to the Bar in London and in February 1964 returned to Malaya and read as a pupil in the chambers of Messrs. Chelliah Brothers, the respondents in this appeal. On 10th September 1964, he was duly admitted to practise as an advocate and solicitor of the High Court of Malaya and with effect from 1st September of that year was employed as an assistant advocate and solicitor in the respondents' chambers at a salary of $501 a month. His salary was subsequently increased to $601 in September 1965. On 31st January 1966 he left the respondents' chambers to practise on his own.

The Employees Provident Fund Board to whom I shall refer hereinafter as "the board" contended that Mr. Brar on becoming employed by the respondents continued to be an employee within the meaning of the Ordinance. This was apparently disputed by the respondents. So the board applied to the High Court by way of originating summons for the following declarations:—

(1) that Mr. Brar was an employee within the meaning of section 2 of the Employees Provident Fund Ordinance 1951 of the respondents during the period 1st September 1964 to 31st January 1966,

(2) that upon its true construction the proviso to paragraph 2 of the First Schedule of the Employees Provident Fund Ordinance 1951 applies to Mr. Brar during the period from 1st September 1964 to 31st January 1966,

(3) that the respondents are liable for arrears of contributions amounting to $800 and interest thereon under the provisions of the Employees Provident Fund Ordinance 1951 in respect of the employment of Mr. Brar for the period 1st September 1964 to 31st January 1966.

The learned judge held that there was a break in the service and Mr. Brar ceased to contribute to the fund when he resigned in August 1960 and by reason of the provisions of section 13(2) of the Ordinance he was no longer to be treated as an employee within the meaning of the Ordinance and his re-employment by the respondents at a salary exceeding $500 a month, had excluded him from the provisions of the Ordinance.

In my view, the problem before us should be solved by the application of the principles laid down by Turner L.J. in *Hawkins* v. *Gathercole* [3] and cited with approval by Lord Wrenbury in the *Viscountess Rhondda's claim* [4] at page 397 as follows:—

"In construing the Act, (i.e. The Sex Disqualifications (Removal) Act 1919) however, it must, of course, be borne in mind that complete generality is not necessarily to be attributed to general words. The limitations upon a proposition of that kind are best found, I think, in the masterly judgment of Turner L.J. in *Hawkins* v. *Gathercole* (6 D.M. & G. 1). The dominant purpose in construing a statute is to ascertain the intent of the legislature, and this may be done in any one of three ways. First, by considering the cause and necessity of the Act, secondly, by comparing one part of the Act with another; and thirdly (and this is the most indefinite) sometimes by foreign (meaning extraneous) aids 'so far as they can justly be considered to throw light upon the subject.' All of these, according to the language in *Stradling* v. *Morgan* (Plowd. 205), are governed by the words 'so that they (the judges) have ever been guided by the intent of the legislature which they have always taken according to the necessity of the matter and according to that which is consonant to reason and good discretion.'"

It is agreed by all concerned that the primary object of the Employees Provident Fund Ordinance is to provide for the economic future of all wage-earners whose monthly income is $500 or less, by compulsory contributions by the employee from his wages and contribution by the employers. Now section 7 provides that every employee and employer shall be liable to contribute at the rate set out in the third schedule and such contribution is to be paid monthly or at intervals of 3 months as the case may be. Section 8 imposes on the employer a duty to pay both contributions first but gives him the right, however, to recover from the employee the amount of any contributions payable on behalf of the employee. These contributions would be paid to the board whose duty it is to pay such contributions into a fund known as the Employees Provident Fund. After the employee has paid his contributions, and so long as he has to his credit any amount in the fund, he remains a member of the fund, and he ceases to be a member only when he dies, or is allowed to withdraw from the fund all money standing to his credit in circumstances described in section 13.

The Ordinance apparently applies to all wage-earners except those described in the First Schedule and those for whom an approved fund has been established under section 16 including any scheme in respect of persons in a pensionable employment with the Government of the Federation or of the State. It also would apply to all types of employees whether their wages are agreed to be paid monthly, weekly, daily or otherwise and to cover all employment of any length of service exceeding one month.

There is another notable thing that though there is a provision in section 13, for the withdrawal of contributions from the fund, there is no provision for the resignation of a member from the fund.

In the circumstances, in my view, once an employee commenced to contribute and so became a member, his subsequent unemployment does not affect his status as a member though his liability to contribute would only arise when he is an employee and earning wages. In other words, once he is a member he will always be a member. In the light of these observations I would therefore say that the proviso to paragraph (2) of the First Schedule would apply irrespective of whether the increase of his wages above $500 a month occurred during his employment with the same or with another subsequent employer.

I would therefore hold that Mr. Brar was liable to contribute on his re-employment by the respondents. There will be therefore, an order in terms of the prayers in the originating summons dated 26th October 1967. The appeal is allowed with costs.

**Ong Hock Thye C.J. (Malaya):** From June 1957 Mr. Kirpal Singh Brar was a member of the Employees Provident Fund, as an Inspector of Police employed by the Government, until he resigned in August 1960. In April 1961 he proceeded to London to read law. Returning to

Malaya in 1964, after call to the Bar, he was admitted to practise as an advocate and solicitor on September 10, 1964. He was thereupon employed by Chelliah Brothers as an assistant in the firm with effect from September 1, 1964 at a monthly salary of $501, which was increased to $601 twelve months later. He continued in such employment till January 31, 1966, when he resigned to set up practice on his own.

Upon an application by the Employees Provident Fund Board to the court for a declaration (a) that Mr. Brar was an "employee" within the meaning of section 2 of the Employees Provident Fund Ordinance 1951 and (b) that the first proviso to paragraph (2) of the First Schedule to the Ordinance was applicable to him during the period of his employment by Chelliah Brothers, an order was sought to make the employers liable for the sum of $800, with interest, as arrears of contribution to the Employees Provident Fund. The claim was dismissed and against that decision the board now appeals to this court.

The issue in this case is the proper interpretation of the proviso in question. The First Schedule to the Ordinance lists in ten categories those who are excepted from the definition in section 2 of "employee". Paragraph (2), with provisos, reads as follows:—

"(2) Any person whose wages exceed five hundred dollars a month:—

Provided that where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance, or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee at any time exceed five hundred dollars a month such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be five hundred dollars a month:

Provided that a person engaged in employment in a resident medical capacity in approved hospitals or institutions with a view to registration under the Medical Registration Ordinance, 1952, shall not be deemed to be an employee for the purposes of this Ordinance during the period of such employment."

The contention of learned counsel for the board, here and in the court below, was "once a contributor, always a contributor, however unjust, arbitrary or inconvenient" the effect of the first proviso may be in special cases. As to the effect of a break in employment he quoted two extreme examples:—

(a) "A student follows employment at a wage less than $500 a month for two months before going up to University. Upon leaving University he starts his real working life at a salary in excess of $500 a month".

(b) "A person changes employment. He leaves one job at a salary of less than $500 to go to another at a salary in excess of that sum, with only a two-week break of unemployment between the two jobs".

Counsel conceded that the first example above is an anomaly which may arise if the proviso is to operate regardless of the break in employment. The second example, on the other hand, is equally anomalous if any kind of break in employment has the effect of making the proviso inoperative. I am afraid I have not been able to appreciate the merits of the solution, if it can be called a solution, offered by him, which must do less than justice in the one case in order to achieve the objects of the Ordinance in the other.

The employers' argument, as I understand it, is that an inference is to be drawn from the use of the contrasting words in juxtaposition in the following phrases, namely, "*Any person* whose wages exceed five hundred dollars a month" and "provided that where after *an employee* etc.". It was argued that "any person" refers to such person prior to employment, while "an employee" necessarily imports a "contract of service", so that, in this case Mr. Brar's contract of service being in respect of employment at a salary in excess of $500, he was not an "employee" within the meaning of the Ordinance. With respect, the distinction is so faint that I am unable to perceive it.

It is unnecessary to recite at length the grounds on which the learned judge held that Mr. Brar did not come within the purview of the first proviso. It is sufficient to state that, in my judgment, his decision was right because it must commend itself to all as just and fair instead of being so strait-laced as to work an injustice.

My own view is that the words "*shall not by reason only of this paragraph*" really govern the construction of the proviso. It clearly implies that the paragraph itself is *only one* among other relevant factors to be taken into consideration. What is relevant in the circumstances of each particular case depends, of course, on the special facts of that case. An infinite variety of circumstances cannot obviously be legislated for with particularity. Neither the draftsman nor the Legislature has the capacity of unlimited foresight. Wisely, therefore, it has been left to the discretion of the board to use their good sense as each case comes for their determination. "Where discretion lies it should not be hide-bound by authority", said Sellers L.J., in *Merchandise Transport Ltd.* v. *British Transport Commission.*[5] The proviso consequently refrained from drawing the boundaries of the board's discretion. If the board thought otherwise, they were wrong. By adopting the contrary view, as being armed with discretion, the two extremes of anamolous cases cited by counsel present no problem. "It is the intent of every statute which confers a discretionary power that the power should be used justly." So said Devlin L.J., in *Berry* v. *British Transport Commission.*[6]

How is a statute to be truly workable, in the sense of achieving its objective, unless its object and purpose are borne in mind? Could a case such as Mr. Brar's have been within the contemplation and intendment of the draftsman and the Legislature? I think the answer clearly is no, for the second proviso reveals, by way of illustration, afterthoughts in 1963 with special reference to a profession which claims no privileged or preferential treatment over that of an advocate and solicitor.

For Mr. Kirpal Singh Brar, his cessation from active employment for 4 years was not something that happened in routine employment, nor was it a promotion in such employment or a mere break, but a change of profession altogether. It was a material fact and the learned judge considered it so. With respect, I share his view. If a break of 4 years and a change of profession are not to be considered adequate grounds, what if the employment was interrupted for, say, 10 years followed by an appointment to a high executive position with appropriate emoluments? Where does one draw the line? Pursued to its logical conclusions, the board's argument must inevitably result in absurdities.

Furthermore, statutes imposing pecuniary burdens are subject to the rule of strict construction. "It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties". (see *Maxwell* on *Interpretation of Statutes*, 11th Ed., p. 278). Should not this principle also be borne in mind in construing the Ordinance?

For the reasons above-stated, I am of opinion that the judgment of the learned trial judge ought to be affirmed. I would dismiss the appeal with costs.

Since completion of the above judgment I have had the opportunity of reading the judgments to be delivered by the learned Lord President and MacIntyre F.J. Having given the most careful consideration to the majority opinion and the *ratio decidendi* thereof I regret to say, with the utmost respect, that I have not been persuaded to change my mind. The essential difference between our views is that, in mine, the board was by statute invested with a discretion which they are at liberty to exercise or not as the justice of any particular case may require. The contrary view would seem to construe the first proviso as if 23 words therein were meaningless surplusage, so that it reads, in effect, as follows:—

"Provided that where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee at any time exceed five hundred dollars a month . . . . his wages shall for all the purposes of this Ordinance be deemed to be five hundred dollars a month:"

The 23 words omitted from the above read:

". . . . such employee shall not by reason only of this paragraph be deemed to have become excluded from the provisions of this Ordinance, but . . . ".

Now, the word "only" means "by or of itself alone, without anything else". (see *Shorter Oxford English Dictionary*). Thus paraphrased, I think there can be no doubt that the import of the phrase is as follows: "*This paragraph alone, without anything more,* does not exclude such employee", that is to say, the employee who has become liable to pay contributions. What if there be "anything more", which should prove to be cogent material facts in any particular case? Are these facts nonetheless to be ignored as non-existent? If so this construction would seem to ignore the cardinal rule *ut res magis valeat quam pereat* laying down that, if possible, the words of an Act must be construed so as to give a sensible meaning to them. It may well be that, in the instant case, the board would not have decided to exercise their discretion in Mr. Brar's favour. I say nothing about that. But to seek the ruling of this court that they have no discretion whatsoever is an abnegation of statutory powers which, in my judgment, deserves no judicial support.

**MacIntyre F.J.:** I have read the judgments of the learned Lord President and of Ong Hock Thye C.J. They have come to opposite conclusions. It is, therefore, necessary for me to state my views as briefly and clearly as possible.

The facts are not in dispute. The simple issue is whether Mr. Kirpal Singh Brar, while employed by the respondent at a salary which exceeded $500 per month, was liable as an employee to contribute to the Employees Provident Fund. If he was, the appellant would be entitled to the declaration sought for in the originating summons.

The word "employee" is defined in section 2 of the Employees Provident Fund Ordinance, 1951, as follows:—

" 'employee' means any person, not being a person of the descriptions specified in the First Schedule to this Ordinance, who has attained the age of sixteen years and is employed under a contract of service or apprenticeship whether written or oral and whether expressed or implied to work for an employer;"

Clause (2) of the First Schedule to the Ordinance reads:—

"(2) Any person whose wages exceed five hundred dollars a month:—

Provided that where after an employee has become liable to pay contributions as provided in section 7 of this Ordinance, or would at any time but for the provisions of sub-sections (1), (1A) and (2) of section 16 thereof have become so liable, the wages of such employee at any time exceed five hundred dollars a month such employee shall not by reason only of this paragraph be deemed to have become excluded from the

provisions of this Ordinance, but his wages shall for all the purposes of this Ordinance be deemed to be five hundred dollars a month:

Provided that a person engaged in employment in a resident medical capacity in approved hospitals or institutions with a view to registration under the Medical Registration Ordinance, 1952, shall not be deemed to be an employee for the purposes of this Ordinance during the period of such employment."

It is perfectly clear that clause (2), subject to the proviso, excludes all wage-earners from being employees for the purposes of the Ordinance if the wages paid exceeded $500 a month. But the proviso makes an exception in the case of a wage-earner who is already an employee for the purposes of the Ordinance when he commences to draw a salary exceeding $500.

It is, I think, accepted in principle that an employee continues to remain an "employee" for the purposes of the Ordinance irrespective of whether he changes his employer, or the nature of his employment or there is an interval of unemployment, as long as his salary is less than $500 *per mensem*. It is also I think, not disputed that a contributor to the fund continues to be an employee even after he reaches, by virtue of periodic increments, a stage when his salary exceeds $500 *per mensem*. The point that was canvassed before us is that these principles cease to apply when a contributor who had been in receipt of a salary of less than $500 takes up a new appointment after a period of unemployment at a salary exceeding $500 *per mensem* despite his continuance as a member of the Fund. On the very face of it, this argument appears illogical but I think it is also untenable by virtue of the provisions of section 13(2) of the Ordinance which make it clear that a member of the fund shall not be treated as an employee for the purposes of the Ordinance only if he withdraws any sum standing to his credit.

Mr. Kirpal Singh Brar is still a member of the fund and, therefore, as such, he must be deemed an "employee" for the purposes of the Ordinance during the period he worked for the respondent.

With regret, I cannot subscribe to the view that a narrow construction of clause (2) of the First Schedule might result in injustice to the employer. The Employees Provident Fund is essentially a social legislation enacted to benefit employees. That point is made clear in the definition of "approved fund" in section 2 of the Ordinance. Therefore, in my opinion, the proper approach to be made in construing the meaning of words and phrases in the Ordinance should be to give effect to the purposes of the Ordinance, i.e., to ensure that an employee is not deprived of his rights under the Ordinance.

With respect, I agree with the judgment of the learned Lord President. The appeal must, therefore, be allowed with costs.

Since writing my judgment, I have read the addendum to his judgment by my brother Ong Hock Thye C.J. He has taken the point that if the 23 words in the proviso quoted by him are not a surplusage, then the proviso should be construed as conferring a discretion on the board to exclude an employee from the provisions of the Ordinance for any reason other than only that he had been a contributor to the fund under section 7 or would have been but for the relevant provisions of section 16 of the Ordinance.

With the greatest respect, I am unable to subscribe to this view. The argument is based purely on the meaning of the word 'only' as defined by the *Shorter Oxford English Dictionary*. I think that in interpreting the meaning of a word, one must also look to the context in which it is used. If the sentence in which the word 'only' occurs had read: ". . . . such employee shall not only by reason of this paragraph be deemed to have become excluded from the provisions of this Ordinance . . . .", I would have been inclined to agree that the proviso implied that an employee could be exempted for other reasons. But the relevant part of the sentence does not read "shall not only by reason of this paragraph" but "shall not by reason only of this paragraph". What therefore the proviso says is not that an employee could be exempted from the provisions of the Ordinance for other reasons but that an employee who had been a contributor under section 7 or would have been one but for section 16, cannot be excluded from the provisions of the Ordinance by reason only that he is in receipt of wages exceeding $500 *per mensem*.

With respect, therefore, my judgment supporting the judgment of the learned president of the court must stand.

*Appeal allowed.*

Solicitors: *Shook Lin & Bok; R.R. Chelliah Bros.*

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## WELFARE INSURANCE CO. LTD. v. MAIDIN BIN MANAP

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya) and MacIntyre F.J.) January 24, 1969]

[K.L. — Federal Court Civil Appeal No. X.39 of 1968]

*Arbitration — Award — Extension of time for making — Whether necessary to obtain order of court — Whether matter in dispute remitted to arbitrators — Meaning of "remit" — Arbitration Ordinance, 1950, ss. 5, 10 & 11.*

In this case the respondent had claimed damages against the appellants, his insurers for damage caused to his vehicle as a result of it having been involved in an accident. On the application of the appellant insurance company the High Court stayed proceedings and the matter was referred to arbitration The arbitration proceedings were concluded on July 15, 1965